

# **WISHA REGIONAL DIRECTIVE**

**WISHA Services**

**Department of Labor and Industries**

## **1.95 Safety & Health Complaint Classification and Handling**

**Date Issued: March 7, 2006**

### **I. Background**

Pursuant to Chapter 49.17 RCW, employers are required to provide a safe and healthy work place to their employees. RCW 49.17.110 delineates the procedures for employees or employee representatives to file work place safety and health complaints. The complaint handling procedures in Chapter II of the WISHA Compliance Manual do not accurately reflect the requirements of the WISHA statute.

### **II. Scope and Application**

This WISHA Regional Directive (WRD) provides clarification and guidance to all WISHA staff regarding classification and response to employee complaints and reports of workplace hazards. This directive will remain in effect until the WISHA Compliance Manual can be updated and supersedes the following WISHA complaint handling policy provided in the current manual:

- 1) Chapter II, Section B.1. and 2. "Definitions"
- 2) Chapter II, Section C. "Identity of Complainant" (first paragraph)
- 3) Chapter II, "Note" under Section D.1.
- 4) Chapter II, "Note" under Section G.
- 5) Chapter II, "Complainant Letter" (first paragraph) – Page II-14.
- 6) Chapter II, "Letter Template" (first paragraph) – Page II-27.

For ease of reference, a copy of this WRD should be added to the WISHA Compliance Manual, preceding Chapter II.

### **III. Mandatory Procedures**

#### **A. Who may file a WISHA safety and health "complaint"?**

In accordance with RCW 49.17.110, any employee or representative of employees, who in good faith believes that a violation of a safety or health standard exists, may file a complaint with the department requesting an inspection of the work place.

Former employees or other individuals (non-representative) are not covered by this statutory provision.

B. How does an employee or representative of employees file a complaint with WISHA?

RCW 49.17.110 requires that work place safety and health complaints be submitted in writing and signed by the employee or the representative of employees. Complaints submitted under RCW 49.17.110 must also explain in specific detail the grounds for the complaint. Information submitted verbally to the Department by an employee or representative of employees will not be treated as a complaint. The Department will process such information as a “referral” as described in Section H. below.

If an employee or representative of employees asks to submit a complaint verbally, you must advise them that RCW 49.17.110 requires that complaints must be in writing in order for the confidentiality provision to apply. You may offer to help them file the complaint, especially if they request anonymity. You may offer to send information, but you may not write the complaint for them.

Note: RCW 49.17.110 states: “any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees.”

C. Can a former employee, relative, physician (or any other individual) file a WISHA safety and health complaint regarding a specific employer and workplace hazard(s)?

No. However, they are encouraged to report work place safety or health hazards to WISHA. When written or oral reports of workplace hazards of this type are received by WISHA, they will be processed, classified and acted upon as a WISHA referral and not a complaint.

D. How does WISHA define a “representative of employees?”

A representative of employees includes the elected labor organizations representing employees at a specific worksite. It also includes employee elected representatives on a specific work place safety committee for the employee in question.

E. If an employee files a WISHA work place safety and health complaint, will WISHA classify the source of the complaint as confidential?

Yes. The source of the complaint will be classified as confidential providing such complaints satisfy the requirements of RCW 49.17.110. A complainant’s confidentiality will be maintained by WISHA if it has been specifically requested by the complainant. An exception may result if WISHA is required by court order to release this information during the course of litigation. If the confidentiality section of the complaint form has not been completed, or questions remain regarding

confidentiality, WISHA will contact the complainant prior to initiating a complaint inspection.

F. Is a copy of the formal complaint required to be provided to the employer?

Yes. During the opening conference of a complaint inspection, a copy of the formal complaint must be provided by the WISHA inspector to the employer or his/her representative. If the complainant has requested confidentiality, all personal identifiers (i.e., complainant name, address, work title, etc.) must be removed from the employer's copy.

If WISHA receives a signed formal employee complaint which is hand written and the complainant requests confidentiality, the hand written complaint shall be typed and printed using the complaint form in the WIN system. The individual transcribing the written complaint into the typed WIN form must sign the printed complaint form and shall include a brief signed statement confirming that the form is a transcribed copy of an actual employee-signed complaint and that an original complaint exists. The original complaint shall be maintained by WISHA in a confidential complaint file.

Under no circumstances may a handwritten copy of an employee complaint where the complainant requests confidentiality be provided to the employer.

G. Will WISHA maintain confidentiality for former employees and all other individuals reporting workplace hazards?

No. Any workplace hazard report not classified as a "complaint" under the provisions of RCW 49.17.110 are not considered confidential. Information, including the identity of the individual submitting the report, may be disclosable.

H. How are other reports of workplace safety and health hazards addressed by WISHA?

Reports of workplace safety and health hazards submitted by former employees or other individuals, and information received from current employees verbally, are not covered by the statute and will be evaluated and addressed on a case-by-case basis. In most cases, these reports will be classified and processed as a "referral." When deemed appropriate by the reviewing supervisor, a hazard report may be addressed by a phone or fax method not requiring a site visit

Approved: \_\_\_\_\_  
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For further information about this or other WISHA Regional Directives, you may contact WISHA Compliance Services at P.O. Box 44650, Olympia, WA 98504-4650-- or by telephone at (360) 902-5460. You also may review policy information on the WISHA website (<http://www.lni.wa.gov/Safety/>).